IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO.1581 OF 2005

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Sood Sizing Industries ...Plaintiff

v/s.

Tamil Nadu Newsprint & Papers
Limited ...Defendant

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Mr.N.P.Shah i/b M/s.Little & Co. for the Plaintiff.
Mr.Ranjit Dharmadhikari for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 12TH JUNE, 2006

P.C.:

On a motion made by the learned Counsel appearing for the Plaintiff, the suit is allowed to be withdrawn.

2. The learned Counsel appearing for the Plaintiff seeks liberty to institute a fresh suit on the same cause of action on the ground that the suit was filed by firm which is not registered under the Partnership Act and that the firm desires to institute a fresh suit after getting the firm registered with the Registrar of Firms. The learned Counsel appearing for the Plaintiff relies on the judgment of the Supreme Court in the case of Haldiram Bhujiawala and anr. v/s. Anand Kumar Deepak Kumar and anr., (2000) 3 Supreme Court Cases 250.

3. I have heard the learned Counsel appearing for the Defendant. He points out that though the suit is being withdrawn on the ground that the firm is not registered, in paragraph 1 of the plaint a positive statement is made by the Plaintiff that the firm is registered under the Partnership Act and the

verification of the plaint shows that one Mr.Ashok Sood, who claims to be the partner of the firm and that the statement made in paragraph 1 is true to his own knowledge. According to the learned Counsel, in view of the patently wrong statement made by the Plaintiff, liberty should not be granted to the Plaintiff.

4. The learned Counsel for the Plaintiff states that the statement made in paragraph 1 is incorrect, but it came to be made inadvertently and it was made without verifying whether the application made by the firm for registration has actually been granted or no.

5. In my opinion, considering that the Plaintiff is seeking liberty to institute a fresh suit after getting itself registered under the Partnership Act, the Plaintiff would be entitled to liberty to institute a fresh suit. However, it is also true that a palpably wrong statement has been made in paragraph 1 without taking care to verify whether the application lodged for registration has been granted or no. In my opinion, while granting liberty to the Plaintiff to institute a fresh suit, costs should be

imposed on the Plaintiff for having made incorrect statement in the plaint. Considering the facts and circumstances of the case, costs in the amount of Rs.10,000/-, in my opinion, would be appropriate.

6. The learned Counsel appearing for the Plaintiff submitted that this court should also direct that the time spent by the Plaintiff in prosecuting this suit should be excluded while computing the period of limitation for the fresh suit that the Plaintiff may file after getting the firm registered. In my opinion, the question whether the time spent in prosecuting this suit is to be excluded for computing the period of limitation under Section 14 of the Limitation Act has to be considered by the court where fresh suit is instituted. Bare perusal of sub-section 1 of Section 14 makes it clear that the question is to be considered while deciding whether the fresh suit to be instituted is within the period of limitation or no. Fresh suit is yet to be instituted. Institution of that suit is dependent on the Plaintiff getting the firm registered and in my opinion, in these circumstances, therefore, it will be the court where the fresh suit will be instituted would be competent to consider and decide that

question and not this Court which is permitting the Plaintiff to withdraw the suit. It goes without saying that in case the Plaintiff institutes a fresh suit he can claim exclusion of time spent in prosecuting this suit in the plaint that he may file and it will be for that court to consider that question on the material produced before it.

7. The present suit is, thus, permitted to be withdrawn with liberty to institute a fresh suit after getting the Plaintiff's firm registered under the Partnership Act subject to the condition that the Plaintiff pays to the Defendant as and by way of cost of this suit Rs.10,000/-. Payment of cost is condition precedent. Refund of court fees as per rules.

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